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white paper

Forming a Corporate Political Action Committee

VENABLE LLP ON POLITICAL LAW

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white paper

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Forming a Corporate Political Action Committee

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Corporations often establish federal political action committees ("PAC") to support the election of officials who are aligned with their businesses' policy goals. PACs are necessary because the Federal Election Campaign Act ("FECA") prohibits using corporate treasury funds to support federal candidates or political parties. Additionally, the FECA places strict limits on how corporations may use their facilities and resources in connection with political activities.[1]

A PAC is somewhat different from other entities associated with a corporation. It is a separate entity, but still managed by, and part of, the corporation.

A corporation and its PAC may solicit voluntary contributions of up to $5,000 per year from the corporation's "restricted class." This includes its salaried employees with decision-making authority, shareholders, and these groups' families. The PAC can make contributions to candidates for federal office of up to $5,000 per election with the funds it raises.

This white paper provides an overview of PACs and summarizes the process by which a corporation can establish a connected PAC.

I. CREATING THE PAC

A. Defining the PAC

To establish a PAC, a corporation must first determine the PAC's name, select a treasurer, establish the PAC's governance, and decide how to administer the PAC. The PAC's name must include the corporation's formal corporate name, including any applicable "Inc.," "Corp.," or other suffix, for use in reports to the Federal Election Commission ("FEC") and disclaimer notices. However, the FECA allows a PAC to use a "pacronym" on PAC letterhead and checks. The PAC's name need not include the words "political

[1] 2 U.S.C. § 441b.

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action committee," although most do. Other, more elaborate names include "good government fund" or "employee action fund."

B. Treasurer, Assistant and Custodian of Records

The FECA requires every PAC to have a treasurer. It does not require any other officers. The treasurer of the PAC is responsible for complying with the FECA and is subject to civil penalties for violations, such as failure to file reports in a timely manner or more serious violations, like accepting corporate contributions. The treasurer should therefore be a "hands-on" person who will actively participate in the PAC's administration.

In addition to a treasurer, the FECA recognizes an assistant treasurer and a custodian of records. It is advisable to have an assistant treasurer for two reasons. First, a PAC cannot accept or make contributions without a treasurer and the FEC allows an assistant treasurer to fill this role in the absence of a treasurer. In addition, the assistant treasurer provides backup to the treasurer if he or she is unable to file a report on time. The custodian of records (who may also be the treasurer or assistant treasurer) is the individual responsible for maintaining all of the documents mandated by the FECA, such as payroll deduction authorization forms, copies of checks and other similar items.

Some PACs also have a "PAC Administrator" who assists the treasurer with preparing FEC disclosure reports and other routine tasks. For example, if a PAC has an oversight body, the administrator will often be responsible for planning and scheduling meetings and keeping minutes of those meetings. Often, the PAC administrator serves as the assistant treasurer and/or custodian of records.

In addition to a treasurer, some PACs decide to have a Chairman or Director to oversee fundraising. This may be a high-profile person who will be a successful fundraiser, but who does not have the time to serve as the treasurer or a background in compliance.

C. Governing Body

Generally, corporations create PAC oversight bodies comprised of representatives from different stakeholders among their government affairs staff and other divisions or subsidiaries to involve a wider audience in their PACs' efforts. Others elect to provide the chief executive officer of the PAC with broad authority to make PAC contributions with little input from management, subject only to supervision of his or her overall job performance.

A PAC oversight body may be vested with varying levels of authority. Some corporations require the PAC oversight body to approve an annual giving plan, which may be quite broad, permitting the treasurer to contribute to recipients who are on the annual plan's preapproved list without further consideration. This permits the treasurer or government affairs staff to react quickly to new opportunities while still acting within limits set by the oversight body. Others require approval by the committee for every contribution before it is made. The level of discretion you confer to a PAC oversight body is a matter of internal organizational dynamics, not campaign finance law. In many instances, the PAC oversight body has general supervision responsibility, an active role in setting contribution goals, and authorizes contributions to candidates.

D. Bylaws

Although not required by law, most corporations elect to adopt bylaws for their PACs' operations. The bylaws serve two basic purposes. First, the bylaws set forth the governance structure as discussed above. Second, the bylaws help to maintain consistency in the PAC's operations over time.

Establishing bylaws presents multiple governance options to consider. The FEC regulates how a corporation manages PAC operations in only a few limited areas, so prudential decisions based on the corporation's policies and procedures, general good governance practices, and its culture and structure generally dictate PAC governance.

E. Establishing the PAC

Once a corporation has finalized the PAC structure details, it is ready to establish the PAC. This involves several simple tasks. First, a corporation's Board should approve the creation of the PAC (this is both a corporate "formality" and often a banking requirement). As part of this step, the corporation should select PAC officers and adopt bylaws for the PAC's administration. Second, a corporation must open a checking account for the PAC. Third, a corporation must file FEC Form 1 with the Federal Election Commission within 10 days of formally creating the PAC. At that point, the PAC may begin its fundraising efforts.

F. Depository Account

The account into which a corporation deposits PAC contributions may not contain any corporate funds. Therefore, a corporation must open a separate account. The account must be opened with a check from a contributor (not with a check from the corporation's account). We recommend obtaining an Employer Identification Number ("EIN") from the IRS. The PAC should use its EIN, not the corporation's EIN or an individual's Social Security Number, to open the PAC's bank account. We also recommend choosing a non-interest bearing account to eliminate the need to file tax returns, which cost more to prepare than all but the largest PACs earn in interest. Opening the PAC account at the same bank that serves the corporation generally is advisable.

II. OPERATING THE PAC

A. PAC Administrative Costs

Under the FECA, a corporation is known as the “connected organization.” As the PAC’s connected organization, a corporation may pay all of the PAC’s administrative and solicitation costs. For example, a corporation may pay all legal fees for the PAC, postage for mailings, staff time to compose solicitations, credit card processing fees, and virtually any other cost associated with the PAC. We recommend instructing the PAC’s bank to deduct all fees directly from an account of the corporation—instead of debiting the PAC account—to preserve PAC funds and to streamline FEC reporting.

Additionally, corporate employees may provide services to the PAC as part of their normal duties, such as determining fundraising goals and deciding which campaigns to support. This enables the PAC to dedicate all contributions to the PAC’s election efforts without deducting administrative costs.

B. Compliance and Reporting

The PAC will be required to deposit checks in a timely manner and file reports with the FEC on a regular basis. Depending on the size of the PAC, the reports must be filed electronically, which generally is easier to do regardless of the PAC’s size.

There are several options for operating the PAC. First, a corporation may use its staff to deposit checks, keep the books and file FEC reports. Staff should be well–trained on how to prepare and submit reports and have access to counsel for questions that arise with reporting. Alternatively, a number of PAC administration companies provide PACs with the opportunity to outsource compliance duties.

C. PAC Solicitations

The PAC must be funded with voluntary contributions of up to $5,000 per year.[2] Although any U.S. citizen (or permanent resident alien) is permitted to contribute to the PAC, the PAC may solicit only its “restricted class” for contributions. The restricted class is comprised of the corporation’s (1) salaried, management-level employees[3]; (2) shareholders; and, (3) these groups’ families. All donors must be U.S. citizens or green card holders.

D. PAC Expenditures

Initially, the PAC will be allowed to make contributions of up to $2,500 per election to federal candidates (e.g., $2,500 to each of a candidate’s primary, runoff, general and special elections per election cycle). Once it has been in existence for six months,

[2] Contributions may be made by check, credit card, payroll deduction or direct debit. If a corporation uses payroll deduction or direct debit, it may be a one-time deduction or it may be periodic. The corporation must obtain signed consent from each donor who chooses to contribute by payroll deduction. The corporation must also retain copies of all contribution checks made out to the PAC.

[3] Management-level employees include salaried employees with “policymaking, managerial, professional or supervisory responsibilities.” 11 C.F.R. § 114.1(c). This specifically includes the “individuals who run the corporation’s business such as officers, other executives, and plant, division, and section managers” and also “individuals following the recognized professions, such as lawyers and engineers.” *Id.* § 114.1(c)(1). The FECA specifically excludes “[p]rofessionals who are represented by a labor organization” and “[s]alaried foremen and other salaried lower level supervisors having direct supervision over hourly employees” from the restricted class of executives that may be solicited. It also excludes consultants who are not association employees. *Id.* § 114.1(c)(2).

received contributions from 51 people, and given to five candidates, it may make contributions to candidates of up to $5,000 per election.[4] Thus, the PAC could give up to $10,000 to a single candidate in the typical election cycle: $5,000 for the primary and $5,000 for the general.

The PAC may also make contributions to political parties and other PACs. For example, it is allowed to give $5,000 a year to any other PAC. However, a corporation's PAC may not solicit other PACs for contributions.

The PAC may also make contributions to state candidates, but will be subject to state contribution limits and reporting requirements if it does so. Before deciding to give to state candidates, the PAC should carefully investigate the requirements that will apply.

Although the FECA imposes a number of restrictions on PACs, careful planning can minimize their hurdles and risks. Venable can assist with each step in the process and help to navigate all FEC regulations.

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[4] Once the PAC meets the threshold of six months, 51 contributors and five contributions, it is known as a "qualified multi-candidate committee" and must file an FEC Form 1M with the FEC within 10 days of meeting the last of these three criteria to notify the FEC that it is qualified. A multi-candidate PAC must also identify this status on its check stock.